

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No. 09/835,873 Application of: Mark Vange Filed: April 16, 2001 Art Unit: 2168 Examiner: Haythim J. Alaubaidi Attorney Docket No. CIRC018 For: SYSTEM AND METHOD FOR PROVIDING DISTRIBUTED DATABASE SERVICES	Confirmation No.: 5575 Customer No.: 25235
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ATTACHMENT TO PRE-APPEAL BRIEF REQUEST FOR REVIEW

MAIL STOP AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the final Office Action mailed October 19, 2005, Applicants request that the claim rejections be reviewed prior to the filing of an Appeal Brief for the reasons provided in the following paragraphs.

Issues for Review

Applicants believe there are clear errors in the Examiner's rejections that should be reviewed and that such a review will show that the cited references do not support a prima facie obviousness rejection. The issues for review do not involve determining what a reference teaches but instead involve determining whether what is taught by the reference as construed by the Examiner can support a prima facie rejection of claims based on obviousness and whether a proper case of obviousness has yet been stated (i.e., an independent claim that includes additional/different limitations seems to be rejected based on the reasons provided for other independent claims).

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All claims, i.e., claims 1-5, 7-9, 11-16, and 21-23, stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Pat. No. 6,553,413 ("Leighton") in view of U.S. Pat. No. 6,047,327 ("Tso").

One issue for review is whether either Leighton or Tso show at least two intermediary servers or computers as defined and called for in independent claims 1 and 8. These intermediary servers or computers are coupled to a network and have "an enhanced communication channel" between them. One intermediary server or computer is provided logically close to the client application and one is provided logically close to a data storage mechanism (such as a database server or system). The Office Action states that Leighton fails to show the locating of the two servers/computers as called for in the claims and cites Tso for providing two such intermediate servers, such as with servers 17 and 19 in Figure 1.

However, the final Office Action in the Response to Arguments asserts that both references teach the "enhanced communication channel" called for in claims 1 and 8. Applicants disagree. The Examiner cites the hosting system 35 of Figure 3 in Leighton as teaching this enhanced communication channel. However, in Figure 3, there is no showing of a channel between any two of the hosts 36. The discussion cited at col. 5, lines 50-58 generally describes the desired benefits of the Leighton hosting system 35 but fails to discuss providing an enhanced communication channel at all let alone between two of the hosts (which, as the Examiner has admitted, are not logically close in location as called for in claims 1 and 8). Hence, the features cited in Leighton fail to teach the enhanced communication channel element of claims 1 and 8.

Tso is cited briefly as teaching this feature of the claims with Figure 1 elements 17 and 19 and "the communication between the servers." However, Applicants have reviewed Tso thoroughly and found no teaching whatsoever of an "enhanced communication channel" between servers 17 and 19. It appears that the Examiner is reading the limitation "enhanced" out of the claims (and likely also reading out the term "channel"). Applicants' specification defines "enhanced" with reference to a channel as "the channel offers improved quality of service, lower

latency, prioritization services, higher security transport, or other features and service that improve upon the basic transport mechanism (such as TCP) defined for Internet data transport" at page 9, lines 24-31 (emphasis added). Hence, if it is assumed that servers 17 and 19 do communicate, there is no teaching that such communication is not done using "the basic transport mechanism (such as TCP)" as would likely be assumed by one skilled in the art and which the enhanced communication channel is distinguished from in its definition. Applicants could only find server 19 discussed at col. 2, line 62 and at col. 21, lines 15-32, but neither citation of Tso provides the necessary teaching to show or suggest an enhanced communication channel. Hence, the features cited by the Examiner in Leighton and Tso fail to teach or suggest the "enhanced communication channel" element of claims 1 and 8, and Applicants request that this rejection be reviewed prior to appeal and withdrawn.

Claims 2-5, 7, 9, and 11-16 depend from claims 1 and 8, and the rejection of these claims is requested based on the issues presented for claims 1 and 8.

Another issue for review prior to appeal is whether a proper case of obviousness has yet been stated for independent claim 22. The final Office Action states that claim 22 is "similar in scope to the rejected claim 1" and then asserts that Leighton teaches the final element of claim 22, i.e., "causing an intermediary server to respond to at least some received requests..." However, the final Office Action does not provide a citation to Leighton (or Tso) that shows or suggests the second to the last limitation which calls for "implementing at least some of the database management system in local data storage within the intermediary servers."

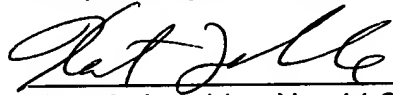
Applicants do not believe this limitation is shown by the hosting servers of Leighton as these servers are not "coupled to receive the requests from client applications" and do not implement at least some of the database management system as called for in claim 22 but instead teach such as at col. 4, lines 25-30 that "when an HTTP request for the page is received, the base HTML document is served by the Web site and some portion of the page's embedded objects are

served from the hosting servers..." Leighton does not teach that the hosts receive requests from client applications, as Leighton teaches the Web site serves the base HTML document, or that the hosts implement a portion of a database management system, as Leighton teaches the hosts serve only a portion or embedded objects of a page with the response still being served by the Web server. Hence, a prima facie case of obviousness is not stated in the final Office Action as Leighton and Tso are not cited as teaching each and every limitation of claim 22. Claim 23 depends from claim 22 and a review of its rejection is also requested for the reasons provided for claim 22.

In view of all of the above, Applicants respectfully request that a panel review the Examiner's rejections. It is believed that such a review will produce a finding that there are no actual issues remaining for appeal and that the application is allowable or requires further prosecution before being submitted for appeal.

4/18/06

Respectfully submitted,



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